

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.762 OF 2022

Ajay @ Ajit Dattatray Kokate

...Applicant

VERSUS

The State of Maharashtra

...Respondent

...

Mr. Ganesh J. Kore, Advocate for the applicant.

Mr. S.B. Narwade, APP for the respondent-State.

...

CORAM : S.G. MEHARE, J.

DATED : 18th JULY, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State at length.
2. It has been alleged against the applicant that when the complainant was removing the benches kept in front of the hotel of the applicant, he abused them. Thereafter, the applicant beat the first informant with slaps on his face and chest.
3. The learned counsel for the applicant would submit that the applicant was running his business authorizedly, but under the garb of removal of the encroachment, his property was tried to be demolished. The applicant was trying to convince the public servant that he has not committed any encroachment. The learned counsel for the applicant would submit that no incident as such happened. Besides this, the prosecution has no case for the custodial

interrogation of the applicant. The applicant is poor. He runs a small hotel for his livelihood. Therefore, he may be protected.

4. The learned APP has strongly opposed the application contending that there are antecedents to the discredit of the applicant. The offence is serious. There are many eye witnesses to the incident. The applicant has committed overtact and deterred the public servant from discharging his duties. If the applicant would be released on anticipatory bail, a wrong message would go the society. Therefore, the applicant is not entitled to the anticipatory bail.

5. The apprehension of the arrest is the primary requirement to entertain the application under Section 438 of the Criminal Procedure Code. What message that would go to the society is certainly not a ground to consider the application under Section 438 of the Criminal Procedure Code. The purpose of arrest of the person as provided under Section 41 of the Criminal Procedure Code is that the so-called alleged accused may interfere with the proper investigation of the offence or may restrain the person causing the evidence of the offence to disappear or tampering with such evidence in any manner; or threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or unless such person is arrested, his presence in the Court whenever required cannot be ensured. These are the grounds for the arrest of the person against whom a

cognizable offence has been registered. If none of the ground is available, the police officer may not require the arrest of the accused. The prosecution has not a single ground as mentioned under Section 41 of the Criminal Procedure Code for the arrest of the accused. The incident happened, no doubt there are eye witnesses, but the prosecution has no case that the applicant may tamper with the prosecution witness.

6. In view of the provisions laid down under Section 41 of the Criminal Procedure Code, this Court is of the view that the prosecution has no case for custodial interrogation. What message that would go to the society if the person is released on anticipatory bail, has not been incorporated under Section 41 of the Criminal Procedure Code while considering the bail applications. In view of the above fact, this Court is of the view that this is a fit case to exercise the discretion under Section 438 of the Criminal Procedure Code and the application deserves to be allowed. Hence the following order :

ORDER

(A) The Application is allowed.

(B) In the event of arrest, the applicant, Ajay @ Ajit Dattatray Kokate, be released on bail, on executing P.B. and S.B. of Rs.15,000/- (Fifteen Thousand) with one solvent surety in the like amount in Crime No.168 of 2022, registered with Tuljapur Police Station, District

(4)

Osmanabad for offence punishable under Sections 353, 323, 504, 506 of the Indian Penal Code,, on the condition that he shall attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(S.G. MEHARE, J.)